
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



March 9, 2001

TO: ALL PARTIES OF RECORD IN APPLICATION 00-11-038 ET AL.

Decision 01-03-009 is being mailed without the Concurrence of President Loretta Lynch and Commissioner Carl Wood. The Concurrence will be mailed separately.

Very truly yours,

/s/ LYNN T. CAREW

Lynn T. Carew, Chief
Administrative Law Judge

LTC:hkr

Decision 01-03-009 March 7, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan.

Application 00-11-056
(Filed November 22, 2000)

(U 39 E)

Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.

Application 00-10-028
(Filed October 17, 2000)
AB X1 Implementation

INTERIM OPINION

This order recognizes that the Water Code Section 80134 DWR revenue requirement (which includes costs of contracts for the purchase of power and related DWR indebtedness) is not subject to present or future prudence review by this Commission, and that DWR is solely responsible for setting its revenue requirement which we must include in rates.

Discussion

On February 1, 2001, Governor Davis signed Assembly Bill No. 1 from the First Extraordinary session ABX1 1 (AB X1), in an effort to alleviate the energy

crisis in California. AB X1 contains many provisions necessitating action from this Commission, the Department of Water Resources (DWR), and the Department of Finance. Based on input received from parties, the Administrative Law Judge (ALJ) has adopted an expedited schedule to determine the California Procurement Adjustment (CPA) on an interim basis.

Pub. Util. Code Section 360.5, as added by AB X1, requires the Commission to calculate a CPA, which is a portion of the retail rate. The statute defines the CPA as “the difference between the generation related component of the retail rate [on January 5, 2001] and the sum of the costs of the utility’s own generation, qualifying facility contracts, existing bilateral contracts and ancillary services.” The statute and this Commission recognize that headroom, to be further defined under AB X1, may exist and be used to finance DWR purchases. The ALJ is now considering proposals for establishing an interim CPA and expects to render his decision on March 16, 2001. Once the interim CPA is established, we will also establish an interim allocation as required by Section 360.5. Section 360.5 mandates that we determine the amount of the CPA which is allocable to power sold by DWR. That allocation must be paid by the utilities to DWR upon receipt of revenues from retail end users. This revenue stream is denominated the Fixed Department of Water Resources Set-Aside (FDWRSA). This CPA revenue stream once established is “Fixed” because it is permanent and irrevocable.

Additionally, Water Code Section 80110 entitles DWR to recover as a revenue requirement any amounts necessary to recover monies it expends or has expended to purchase power under AB X1, as well as any other amounts

specified under Water Code Section 80134¹. While this Commission retains its general authority under Pub. Util. Code Section 451, we specifically cannot conduct any prudency review of the DWR revenue requirement, which includes costs of contracts for the purchase of power and related DWR indebtedness. Water Code Section 80110 mandates that “any just and reasonable review under Section 451 shall be conducted and determined by the department.” Therefore, we acknowledge that contracts for and purchases of power by DWR and related

¹ Section 80134(a) declares: “The department shall, and in any obligation entered into pursuant to this division may covenant to, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the fund, to provide all of the following:

- (1) The amounts necessary to pay the principal of and premium, if any, and interest on all bonds as and when the same shall become due.
- (2) The amounts necessary to pay for power purchased by it and to deliver it to purchasers, including the cost of electric power and transmission, scheduling, and other related expenses incurred by the department, or to make payments under any other contracts, agreements, or obligations entered into by it pursuant hereto, in the amounts and at the time the same shall become due.
- (3) Reserves in such amount as may be determined by the department from time to time to be necessary or desirable.
- (4) The pooled money investment rate on funds advanced for electric power purchases prior to the receipt of payment for those purchases by the purchasing entity.
- (5) Repayment to the General Fund of appropriations made to the fund pursuant hereto or hereafter for purposes of this division, appropriations made to the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor’s Emergency Proclamation dated January 17, 2001.
- (6) The administrative costs of the department incurred in administering this division.”

indebtedness are not subject to this Commission's reasonableness review. We also acknowledge that under Section 80134(b), DWR will notify this Commission of its revenue requirement and we must ensure its receipt.²

Water Code Section 80114 requires the Commission to ensure that "all, or a portion of, the component rates that are available to the electrical corporations for the purchase of their net short position of electricity are used to recover the revenue requirements" that DWR sets. We acknowledge that this means that this net short stream of income is totally within the control of DWR, is not subject to any prudence review by this Commission, must be paid to DWR and is therefore irrevocably DWR's money.

The exact amount of the net short revenue stream as it relates to the CPA calculation and allocation is still under consideration by this Commission. DWR itself has yet to set a revenue requirement and notify us of it. However, DWR has notified this Commission of the need for these assurances by its February 16, 2001 letter, which is Attachment A. The letter states that Commission action is necessary in order to negotiate favorable terms with sellers of power and to also provide assurances to prospective lenders of DWR's ability to recover revenues from the sale of power to retail end use customers. Water Code Section 80003(a) notes the DWR purchasing program is an essential governmental purpose. Section 80003(b) states that the provisions added by AB X1 "shall be construed in a manner so as to effectuate the purposes and objectives thereof." Water Code Section 80016 directs all state agencies to give DWR reasonable assistance or other cooperation in carrying out the purposes of AB X1. It is our duty to

² We recognize that Section 80110 provides some rate increase relief to a portion of residential ratepayer usage, but it in no way alters the fact the monies are due DWR.

facilitate DWR's purchases of power so it may carry out its responsibilities under AB X1. Therefore, we believe it appropriate to provide these assurances.

It is our intent to establish an interim CPA and interim allocation as soon as possible consistent with due process. At that time we will segregate revenues as requested by DWR. However, the DWR may recover, and the Commission shall approve and impose, either as part of the CPA or as additional rates, rates sufficient to enable DWR to recover its revenue requirements on a timely basis and the provisions of this sentence shall constitute an agreement within the meaning of Section 80110.

Finally, due to pending legislation which would alter Section 80110, we shall stay action on implementation of the suspension of direct access under Water Code Section 80110 until further order.

Comments on Decision

Pub. Util. Code Section 311(e) provides for public review and comment; however, this period may be reduced under certain circumstances. Under Rule 77.7(f)(9) of its Rules of Practice and Procedure, the Commission may determine on its own motion that public necessity requires reduction of this 14-day period. We have weighed the interest in allowing the full comment period against the need to provide certainty about our implementation of these aspects of AB X1, and conclude that the public interest in providing certainty at an early date, especially in the current energy crisis, outweighs the interest in allowing a full comment period. Therefore, this period was reduced.

Comments were filed on March 2, 2001 by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), the Coalition of California Utility Employees (CCUE), the Alliance for Retail Energy Markets (AReM), the Aglet Consumer

Alliance (Aglet) and Enron Power Marketing, Inc. (Enron).³ Reply comments were filed by AReM and Aglet on March 5, 2001.

PG&E requests two modifications. First, PG&E asks that the Commission require DWR to purchase the full net short open position of the utilities as a condition precedent to the utilities' obligation to remit payment to DWR for its power procurement. Second, PG&E asserts that the conclusion of law and ordering paragraph, which find that an agreement within the meaning of Water Code Section 80110 exists, should be modified. It requests that the Commission state that the agreement is interim and subject to refund until DWR's final revenue requirement is set under Section 80110, and that it is limited to the recovery of DWR's revenue requirement and does not include the CPA allocation under Pub. Util. Code Section 360.5.

Edison supports this decision. However, it requests that the Commission call on DWR to purchase the full net short position of the utilities pursuant to the legislative intent of AB X1.

SDG&E supports the decision's approach to await an interim CPA determination under ALJ DeUlloa's expedited schedule before allocating revenues to DWR. However, SDG&E asserts that the decision should contain more findings of fact and conclusions of law reflecting its discussion and, similarly, that an additional ordering paragraph should be included. Like PG&E, SDG&E calls for conditioning DWR's receipt of revenue from SDG&E upon DWR's purchase of all of SDG&E's net short position. SDG&E also objects to characterizing the assurance as to DWR's right to recover rates sufficient to

³ Enron's March 2 motion to intervene and become a party is granted.

enable DWR to recover its revenue requirements as an agreement under Section 80110. Finally, SDG&E believes that the Commission should specify its rationale for staying action on suspension on direct access, speculating that it relates to pending legislation on the topic.

Aglet contends that the references to “net short stream of income” and “net short revenue stream” are inaccurate. Aglet believes that such references imply that these revenues might cover the entire net short position of the utilities. It asserts that such coverage is unclear at this time and therefore the Commission should use the term “available net short revenues”.

On March 5, 2001, DWR has forwarded a letter to the Commissioners stating its support for this decision. A copy of the letter is appended as Attachment B. DWR declares that the present needs of DWR are satisfied by this decision and requests its adoption at the March 7, 2001 Commission meeting.

While we believe that PG&E, SDG&E and Edison raise valid concerns over the legislative intent of AB X1, we will not call for DWR to purchase the entire net short position of the utilities. This Commission has no jurisdiction over DWR’s purchasing decisions. For this reason we also decline to make DWR’s purchase of the entire net short position a condition precedent to the utilities’ obligation to remit funds to DWR. We also reject the changes requested by PG&E and SDG&E as to our declaration of the existence of an agreement under Water Code Section 80110. We find that further findings of fact, conclusions of law or ordering paragraphs, as urged by SDG&E, are unnecessary. We reject Aglet’s assertion that our nomenclature as to net short revenues is inaccurate.

Enron asserts that this decision is the appropriate response to the DWR letter of February 16, 2001. While this decision does not require the utilities to enter into agreements with DWR for distribution and billing of and payment for

power, Enron believes such a request is premature. Enron contends that such an order is not needed at this time because there is no record that DWR has encountered problems in contracting with the utilities for these functions.

CCUE contends that direct access is inconsistent with the procurement structure of AB X1 because it would allow switching to non-utility providers in order to avoid payment of a fair share of DWR costs when the price of power falls below the DWR price in the future. It asserts that customers should not be able to flee to take advantage of lower prices when that time comes. CCUE believes the Commission should end the cycle to direct access providers entering the market when times are good and dumping their customers on the utilities when times are bad. Therefore, CCUE believes that the Commission should pursue a directive to suspend direct access under Water Code Section 80110 as expeditiously as possible.

AReM supports the stay of implementation of AB X1's suspension of direct access. It observes that the Legislature is considering modification of the Water Code Section 80110 suspension. AReM also notes that DWR's letter does not request such action. It asserts that the Commission can avoid the creation of new stranded costs without infringing on customer choice. AReM believes that there is no need to rush to judgment on the suspension of direct access since Section 80110 does not place a time constraint on the Commission regarding its implementation.

We do not find that a stay of implementation of AB X1's suspension of direct access is necessary at this time.

We have made other nonsubstantive changes.

Findings of Fact

1. On February 1, 2001, Governor Davis signed AB X1 in an effort to alleviate the energy crisis in California.
2. Pub. Util. Code Section 360.5, as added by AB X1, requires the Commission to calculate a CPA, which is a portion of the retail rate.
3. The statute and this Commission recognize that headroom, to be further defined under AB X1, may exist and be used to finance DWR purchases.
4. Water Code Section 80110 mandates that “any just and reasonable review under Section 451 shall be conducted and determined by the department.”
5. Water Code Section 80114 requires the Commission to ensure that “all, or a portion of, the component rates that are available to the electrical corporations for the purchase of their net short position of electricity are used to recover the revenue requirements” that DWR sets.
6. DWR has notified this Commission of the need for these assurances by its February 16, 2001 letter, which is Attachment A. The letter states that Commission action is necessary in order to negotiate favorable terms with sellers of power and to also provide assurances to prospective lenders of DWR’s ability to recover revenues from the sale of power to retail end use customers. By letter dated March 5, 2001 (Attachment B), DWR states that this decision meets its present needs.
7. Under Rule 77.7(f)(9) of its Rules of Practice and Procedure, the Commission may determine on its own motion that public necessity requires reduction of the public review and comment period.

8. We have weighed the interests in allowing the full comment period against the need to provide certainty about our implementation of these aspects of AB X1, and determined that the balance favors providing certainty at this time.

Conclusions of Law

1. Section 360.5 mandates that we determine the amount of the CPA which is allocable to power sold by DWR. That allocation must be paid by the utilities to DWR upon receipt of revenues from retail end users.

2. Contracts for and purchases of power by DWR and related DWR indebtedness are not subject to this Commission's reasonableness review.

3. Under Section 80134(b), DWR will notify this Commission of its revenue requirement and we must ensure its receipt.

4. Water Code Section 80114 means that this net short stream of income is totally within the control of DWR, is not subject to any prudence review by this Commission, must be paid to DWR and is therefore irrevocably DWR's money.

5. The Commission must facilitate DWR's purchases of power so it may carry out its responsibilities under AB X1. Therefore, we believe it appropriate to provide these assurances.

6. DWR may recover, and the Commission shall approve and impose, either as part of the CPA or as additional rates, rates sufficient to enable DWR to recover its revenue requirements on a timely basis and the provisions of this sentence shall constitute an agreement within the meaning of Section 80110.

7. Due to the need for DWR to enter into contracts pursuant to AB X1, we conclude that the public interest in providing certainty about our implementation of certain aspects of AB X1 outweighs the interest in allowing a full comment period; therefore, this period was reduced.

INTERIM ORDER

IT IS ORDERED that the Department of Water Resources (DWR) may recover, and the Commission shall approve and impose, either as part of the California Procurement Adjustment or as additional rates, rates sufficient to enable DWR to recover its revenue requirements on a timely basis and the provisions of this sentence shall constitute an agreement within the meaning of Section 80110.

This order is effective today.

Dated March 7, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

We will file a joint concurrence.

/s/ LORETTA M. LYNCH
President
/s/ CARL W. WOOD
Commissioner

I will file a concurrence.

/s/ RICHARD A. BILAS
Commissioner

I will file a dissent.

/s/ HENRY M. DUQUE
Commissioner

ATTACHMENT A

[Letterhead of Department of Water Resources]

February 16, 2001

Commissioners
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Dear Commissioners:

As you are aware, pursuant to recently enacted provisions of the Water Code, the Department of Water Resources (the "Department") is authorized to contract for the purchase of power for sale to retail end use customers within the State of California at such prices and on such terms and conditions as the Department determines appropriate. The Department has begun to enter into contracts for the purchase of power ("Power Purchase Contracts") in accordance with such provisions and pursuant to the Proclamation of Governor Gray Davis dated January 17, 2001 concerning shortages of electricity.

In order to induce the sellers of power to enter into such Power Purchase Contracts on favorable terms to the State and to provide assurances to prospective lenders to the Department as to the ability of the Department to recover its revenue requirement, it is critical that the Commission begin to implement the provisions of AB 1X so that the Department will realize at least a portion of its current revenue requirements from the sale of power to retail end use customers.

The power being purchased by the Department has been and is being delivered to retail end use customers. Revenues relating to such power, which pursuant to the Water Code are the property of the Department, have been or will very shortly begin to be collected by the electrical corporations. Such revenues, of course, are a critical source of funding for the power purchases being made and reimbursing the State for moneys appropriated to the Department to fund such purchases. In order to assure that the Department's revenues are properly segregated and accounted for and promptly remitted to the Department and to minimize the continuing need for General Fund

appropriations, it is critical that the Commission at the earliest possible opportunity adopt an appropriate emergency order addressing several matters discussed below.

Pursuant to Section 80110 of the Water Code, the Department is entitled to recover as a revenue requirement amounts necessary to enable the Department to, among other things, pay for the power purchased by it, and to make payments under any contracts, agreements and obligations entered into by the Department in the amounts and at the times the same become due. Under the terms of said Section 80110, any “just and reasonable” review under Section 451 is to be conducted by the Department and not by the Commission.

As part of an emergency order, the Department requests that the Commission confirm the Department’s understanding that charges for power delivered to retail end use customers will provide sufficient revenues, together with other moneys available to the Department within the Department of Water Resources Electric Power Fund for such purpose, to meet the entire revenue requirement of the Department under Section 80110, including all payments made on or after January 17, 2001 by the Department under Power Purchase Contracts entered into by the Department and determined by the Department to be just and reasonable.

The Department also requests that such emergency order establish an interim method of allocating current generation charges paid by retail end use customers in order to assure a current recovery by the Department of a portion of its ongoing costs. We recognize that any interim allocation of such charges may be adjusted in accordance with subsequent Commission action and that the rates and charges for Department power will ultimately be established pursuant to a further agreement with the Department, all in accordance with relevant provisions of the Water Code. However, it is critical to the success of the Department’s power purchasing program that an initial allocation of revenues be made and that appropriate collection provisions be immediately implemented.

We also request that such order require the electrical corporations to (i) transmit and distribute the Department’s power, (ii) provide billing and collection services for the Department, (iii) segregate in a separate account and hold in trust for the Department all revenues allocable to the Department’s power as received, and (iv) remit such revenues to the Department upon receipt. We also request that the electrical corporations be directed to enter into servicing agreements with the Department to implement the foregoing.

In addition, we request that the order provide that, upon its acceptance by the Department, the order will constitute an agreement between the Department and the Commission within the meaning of Section 80110 of the Water Code.

Thank you for your assistance and attention to this important matter. We will be submitting additional information and requests to the Commission relating to the Department's power purchase program and financing plans and appreciate your continuing cooperation.

Sincerely,

/s/ Raymond D. Hart

for Thomas M. Hannigan
Director

(END OF ATTACHMENT A)

ATTACHMENT B

March 5, 2001

Commissioners
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Draft Decision of Commissioner Bilas Relating to Powers of the
Department of Water Resources and the Interim Allocation of Electricity
Revenues

Dear Commissioners:

In a letter to you dated February 16, 2001, the Department of Water Resources (the "Department") requested that the Commission confirm the Department's understanding that charges for power delivered to retail end use customers will provide sufficient revenues, together with other moneys available to the Department within the Department of Water Resources Electric Power Fund for such purpose, to meet the entire revenue requirement of the Department under Section 80110 of the Water Code.

We wish to reaffirm the statements made in the letter of February 16th and to also inform you that the Department is currently in the process of obtaining interim financing for all or a portion of its power purchase costs.

While we initially supported Item 3 and there are aspects of both of the Draft Decisions before the Commission on this subject that are helpful in terms of ensuring that the revenue requirements of the Department are met, upon further consideration the Department believes the specific language of the Draft Decision of Commissioner Bilas would satisfy the Department's needs at this time. Therefore, in order to enable the Department to expeditiously implement the program described in Assembly Bill 1x, the Department requests that the Commission adopt the Draft Decision of Commissioner Bilas at its March 7th meeting. We understand that this decision is one of several that the Commission

will be addressing on the issue of the allocation of revenues to the Department and that future decisions will refine this allocation process.

Thank you for your assistance and attention to this important matter. We will be submitting additional information and requests to the Commission relating to the Department's power purchase program and financing plans and appreciate your continuing cooperation.

Sincerely,

/s/ Raymond D. Hart

for Thomas M. Hannigan
Director

(END OF ATTACHMENT B)

Commissioner Richard A. Bilas, concurring:

Though I am pleased that today's decision meets Department of Water Resource's (DWR) current needs and permits us to proceed on a determination of a California Procurement Adjustment consistent with due process, I am disappointed that two key provisions of my proposed order were not adopted.

First, we should resolve the issue of whether DWR should be buying all net short power needs for the three utilities. I recognize that we have no jurisdiction over DWR's purchasing decisions. I appreciate DWR's need to exercise care in making purchasing decisions since DWR's revenue requirement is not subject to our reasonableness review and must be included in rates. However, my interpretation of the legislative intent behind AB X1 is that the bill was meant to eliminate further additions to the utilities' undercollections by having DWR cover all net short electricity needs of the utilities. That is the intent espoused by the bill's author, Assemblymember Keeley, and in the Assembly Floor Analysis of the bill. That analysis states, "the IOUs are still 'net short' with regard to generation. The net short is the electricity needs of customers that are not met by the generation resources owned or under contract to the utilities. This bill requires DWR to cover the 'full net short' of the IOUs, and to a limited extent, the net short of municipal utilities." (Analysis at 8.) At present the California Independent System Operator (ISO) is still making costly last minute purchases of power, and the issue of who is responsible for payment is unresolved. This uncertainty adds to the utilities' financial distress and must be resolved somewhere and soon. I believe the Commission should urge an end to these ISO purchases by calling on DWR to purchase the entire net short electricity position of the utilities under DWR's AB X1 authority, just as I believe we must raise rates to make AB X1 workable.

I also believe that a stay of implementation of AB X1's suspension of direct access is the most appropriate course at this time. The prudent course is to await the Legislature's adoption of its final position regarding direct access before proceeding under Water Code Section 80110. We should take official notice of Senate Bill (SB) X1 27 (Bowen) and SBX1 18 (Escutia) which may result in changes to the suspension of direct access. I also concur with AReM's comments on my alternate decision that AB X1 sets no time limit on the Commission's consideration of the suspension. Direct access is not a discredited concept. Had it been allowed to flourish, the State might not be in the present crisis situation. Choice and innovation must not be stifled by destroying all remnants of direct access in the name of a central planning ideology.

/s/ RICHARD A. BILAS
RICHARD A. BILAS
Commissioner

Commissioner Henry M. Duque, dissenting:

Today's decision partially recognizes the Water Code sections under Assembly Bill 1X which speak to the needs of the Department of Water Resources. In particular, it recognizes that the revenue requirement of the Department of Water Resources is 1) not subject to reasonableness review (section 80134), 2) is fully recoverable (80110, 80114, and 80134), and 3) is guaranteed. While I fully support these efforts, I cannot ignore what the final decision does not address.

I am filing today's dissent because the final decision 1) did not address the need for the Department of Water Resources to cover all the net short electricity needs of the utilities, and 2) eliminated the language which would have this Commission recognize pending legislation on direct access.

While some Commissioners are now suggesting that the direct access language should never have been incorporated in the draft order, the fact remains that the language and message was out there in the proposed item 3 on the Commission's February 22 agenda. Although the mere deletion and references to the Commission's position on direct access seems like a reasonable action, I cannot ignore the public statements of fellow Commissioners at today's meeting. If what I heard today was true, some would believe that the Commission should take the opportunity to stop retail competition before the legislature acts because Assembly Bill 1X gives us the authority to do so. I strongly disagree. I await the pending legislation that will address direct access directly and I await the clean up bill to Assembly Bill 1X.

Finally, the reluctance of this Commission to expressly state a recognition of DWR's responsibility for the net short position is yet another lapse in our public duty. The author of AB 1X himself agrees that this was the intent of the legislation. It is important that this Commission be cognizant of the solvency of the utilities, and be responsive to the recovery of DWR's costs. Inadvertent or purposeful attempts to confuse the intent of the legislation is just plain wrong and I cannot support that effort.

For these reasons, I must note my dissatisfaction with today's decision and respectfully dissent.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

March 7, 2001

A.00-11-038 et al.

D.01-03-009

San Francisco